IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6081 of 1999
to
FIRST APPEAL No 6086 of 1999
with
FIRST APPEAL No 144 of 2000
to
FIRST APPEAL No 146 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDJI MANAJI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR SHITAL R PATEL for Appellant

MR KM SHETH for Appellant in FA 144 to 146/00

MR RC KODEKAR AGP for Respondent No.1

MR ARUN D. OZA, GOVERNMENT PLEADER

for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 11/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. These appeals are preferred by the original claimants under Section 54 of the Land Acquisition Act (hereinafter to be referred to as "the Act") read with Section 96 of Code of Civil Procedure, 1908 against the award made bythe Reference Court namely Assistant Judge, Mehsana in Land Acquisition Reference Case Nos. 1253/92 to 1262/92 on 27th April, 1998, awarding compensation at the rate of Rs. 27/= per sq. mt. over and above the compensation already awarded by the Special Land Acquisition Officer. Thus, the claimants were held entitled to claim Rs. 30/= per sq. mt.

#. The lands situated at village Sabaspur, taluka Kadi, District - Mehsana were acquired for Narmada Main Canal Project under the Act. Notification under Section 4 of the Act was published in the government gazette on 19.5.90. After following the procedure laid down in the Act, the Special Land Acquisition Officer offered compensation at the rate of Rs. 3/= per sq. mt. to the claimants by his award dated 29.6.91. Being aggrieved, the claimants sought References under Section 18 of the Act and hence, the Reference Court was required to determine the market price of the lands.

#. Record and proceedings reveal that the lands are agricultural lands. The agriculturists used to take three crops in a year. The evidence with regard to yield is given by giving details claiming that after deducting the expenses per Vigha, the agriculturist would earn Rs. 30,000/- per year. About the facilities provided to the village and nearabout industrial development, witness Gamaji Ambaram Thakor exh. 12 has pointed out that industrial town of Kalol is at a distance of about 7 kms. which is headquarter of the taluka. It is pointed out by him that people are getting S.T. Bus facilities, asphalt roads are provided connecting Ahmedabad and Kadi. Nearby villages, there are industrial establishments and residential quarters. Arvind Mill is situated at about 2 and half kms. There are factories in the village itself such as Colgate Palmolive etc. Ahmedabad city is at a distance of 8 kms. Ahmedabad-Sarkhej Highway is at a distance of 6 kms. Not only that but witness has pointed out that the High Court of Gujarat, Nirma Institute, Civil Hospital, Swaminarayan Gurukul Vishwa Vidhyapith etc. are situated at a distance of 6 to 7 kms. The agricultural lands are converted into farms. The witness has also pointed out that Borisana and Saij are nearby

villages. The lands situated at village Saij and Borisana are equal in fertility.

#. In the instant case, the claimants have placed reliance on the award of the District Court in Land Acquisition Reference Nos. 69/86 to 73/86. In the said case, the lands situated at village Saij, Taluka Kadi, were acquired for the benefit of Oil and Natural Gas Corporation Ltd. for which notification under Section 4 of the Act was published on 28.7.83. The Reference Court ultimately awarded Rs. 80/- per sq. mt. and the award of the Reference Court has become final. The said award was produced vide exh. 30.

#. The claimants also relied upon the award exh. 14 made bythe Reference Court for the lands situated at village Borisana, Taluka - Kalol in a group of Land Acquisition Reference Nos. 174/93 to 185/93. In respect of the said lands, the notification under Section 4 of the Act was published on 7.9.89 and the Reference Court awarded Rs. 50/- per sq. mt. against which First Appeal Nos. 2523 to 2534/97 were preferred and this Court (Coram: Y.B. Bhatt & C.K. Buch, JJ) vide judgment and order dated 23.4.98 dismissed the said appeals.

#. The claimants also relied upon exh. 15 - the award made by the Reference Court in Land Acquisition Reference Case Nos. 765/90 to 767/90 and 464/90 wherein the lands situated at village Jaspur, Taluka - Kadi, were acquired for which notification under Section 4 of the Act was published on 2.1.86. The lands in that case were acquired for Narmada Canal. The Reference Court awarded Rs. 40/- per sq. mt. The claimants being aggrieved by the the said award, preferred First Appeal Nos. 5760 to 5763/98 and the Division bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ) awarded Rs. 52/- per sq. mt.

#. The claimants also produced before the Reference Court village forms 7/12 vide exhs. 16 to 24 to substantiate their case that they were taking three crops in a year and what witness has stated in the evidence is thus corroborated by the documentary evidence.

#. In the instant case, reliance is placed on awards. The lands situated at village Sabaspur, Taluka - Kalol were acquired for Narmada Project (Main Canal), wherein notification under Section 4 of the Act was published on 11th June, 1990. Thus, before us, there is Division

Bench judgment rendered in F.A. Nos. 3578 to 3592/00 wherein the market price for the agricultural lands situated at village Sabaspur is fixed. The Reference Court, on appreciation of evidence on record, determined the market value of the acquired lands at Rs. 48/= per sq. mt. Attention of the Court was also drawn to the fact that the lands of village Sabaspur are at par with the lands of contiguous villages, i.e. Jaspur, Borisana and Saij in terms of fertility, costs, agricultural yields, net annual income etc. The Court also found that the acquisition of land from village Jaspur was agitated upto the Apex Court and the market value @ Rs. 52/= per sq. mt. was ultimately confirmed. About village Serisa, the Division Bench also noted that the determination of price at the rate of Rs. 45/- is proper. Mr. Patel also drew our attention to another decision of the Division Bench, wherein notification under Section 4 of the Act was published on 15.5.94 for acquisition of lands situated at village Sabaspur, Taluka - Kalol. The Division Bench (Coram: M.R. Calla & J.R. Vora, JJ) in First Appeal Nos. 147/00 to 155/00, confirmed the award made by the Reference Court awarding the compensation at the rate of Rs. 48/= per sq. mt.

#. Mr. Patel, learned counsel, appearing for the claimants, placed before us, another judgment delivered by the aforesaid Bench in First Appeal Nos. 424/00 to 437/00 for the lands situated at village Sabaspur. In the said case, notification under Section 4 of the Act was published on 10.7.90 and the Division Bench confirmed the rate of Rs. 48/- per sq. mt. as awarded by the Reference Court. Considering the year of notification under Section 4 of the Act, in the instant case being 1990 which is the year of notifications under Section 4 of the Act in other three cases for acquisition of the lands situated at Sabaspur, the amount awarded by the Reference Court must be taken into consideration while determining the market price. The State has not pointed out by leading evidence that the lands acquired under the Act for which notifications under Section 4 of the Act were issued in 1990 and the lands acquired in the present case are not equal in nature and fertility. In view of different dates of notifications only, for the agricultural lands of the same village having facilities of irrigation and lands having similar nature and fertility, different yardstick cannot be applied. In view of what is stated hereinabove, we are of the opinion that the claimants must be paid Rs. 48/per sq. mt. as market price of the lands. Under the circumstances, the appeals preferred by the claimants are required to be allowed. The award made by the Reference Court is modified and it is held that the claimants shall be paid

compensation at the rate of Rs. 48/- per sq. mt. It goes without saying that the claimants are entitled to get all statutory benefits including interest on solatium.

##. Mr. Patel, learned advocate appearing for the claimants, submitted that in view of pronouncement of judgment by the Apex Court in case SUNDER vs. UNION OF INDIA now reported in 2001 SOL Case No.551, the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

"27. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

28. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

##. In view of the above, the appeals are allowed accordingly with no order as to costs. Mr. Patel, learned counsel submitted that the State has not paid amount as determined by the Reference Court. The land have been acquired much earlier and therefore, the State must make the payment. However, Mr. Kodekar, learned AGP stated that the process may take some time. Under

these circumstances, we direct that the claimants shall be paid 50% amount of the compensation within three months from the date of this judgment and rest of the 50% amount shall be paid to the claimants within three months thereafter on proper verification.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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